

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

HOLIDAY INTERNATIONAL
SECURITY, INC.

Employer

and

Case 5-RC-15457

FEDERATION OF POLICE, SECURITY
AND CORRECTION OFFICERS, AFSPA

Petitioner

and

UNITED UNION OF SECURITY GUARDS

Intervenor

DECISION AND DIRECTION OF ELECTION

The Employer provides security services to agencies of the United States Government and to private corporations. The Petitioner (FOPSCO) seeks to represent a unit of full-time and regular part-time security guards employed by the Employer at the Social Security Administration building located at Social Security Boulevard, Woodlawn, Maryland. The Intervenor contested the petition on the basis that the Petitioner, which seeks to be certified as the collective bargaining representative of these security guards, is directly or indirectly affiliated with another union which admits to membership employees other than guards. A hearing officer of the Board held a hearing and the Petitioner and the Intervenor filed briefs.

As evidenced at the hearing and in the briefs, the sole issue is whether under § 9(b)(3) of the Act, the Petitioner may be the certified collective bargaining representative of the Employer's security guards at the Social Security Administration site in Woodlawn, Maryland. The Employer and the Intervenor assert the Petitioner may not be so certified as the Petitioner is directly or indirectly affiliated with another union which admits to membership employees other than guards, in contravention to the prohibitions contained in § 9(b)(3) of the Act. Specifically, the Intervenor and Employer contend the Petitioner is disqualified for two reasons: (1) the Petitioner participates in the benefit

plan created and administered by a non-guard union, and (2) the Petitioner's officers are current officers and advisors for a non-guard union. The Petitioner responds that neither its participation in the non-guard union benefit plan nor the current status of any of its officers is tantamount to direct or indirect affiliation with any union which admits employees other than guards.

I have carefully considered the evidence and arguments presented by the parties on this issue. As discussed below, I conclude that the Petitioner is not directly or indirectly affiliated with another union that admits non-guard employees, and therefore, the Petitioner may be certified as the collective bargaining representative of the employees in the petitioned-for unit.

FOPSCO's President, Howard Johannssen, was the sole witness at the hearing. Johannssen testified that he has worked for FOPSCO since 1995 and served as the President of FOPSCO since 1999. FOPSCO was founded in 1992 under the name Federation of Security Guards. In 1995, FOPSCO created, and is affiliated with, the American Federation of Special Police Association, AFSPA. FOPSCO is currently the only constituent member of AFSPA but hopes to encourage other guard or security unions to join to form an alliance of unions to work for the interests of security guards. An earlier, but unsuccessful, affiliate federation, American Federation of Special Police and Security Officers, AFSPSO, was created by FOPSCO in 1994. Until the year 2000, two units of FOPSCO, not in issue in the instant case, had participated in the Industrial Technical Professional Employees (ITPE) pension and health and welfare plans.¹ These ITPE plan documents list and refer to both the AFSPSO and AFSPA. Since 2000, however, no FOPSCO units have participated in the ITPE pension or health and welfare plans. No FOPSCO unit ever participated in the ITPE annual benefit plan. FOPSCO has established its own pension plan which it has been offering to its guard members for at least the last calendar year. While FOPSCO is in the process of establishing its own health and welfare plan, its practice for at least the last calendar year has been to negotiate for use of the employer's health and welfare plan with a provision that the employer will allow its employees to opt into FOPSCO's plan once that plan is established.

Johannssen testified that in addition to himself, the current officers of FOPSCO are Manchester Brooks, First Vice-President; Jim Jones, Second Vice-President; Mary Joe Maneri, Secretary-Treasurer; Henry F. Schickling, National Business Manager; Willie Jones, Trustee; and Laney Moore, Trustee. Johannssen testified without contradiction that no officer or elected official of FOPSCO has held an office or elected position with any other labor organization within the last calendar year. Johannssen explained that Schickling had been the President of the Tool, Dye, and Mold Makers

¹ The two FOPSCO bargaining units were located in Beltsville, Maryland, and Tampa Bay, Florida. FOPSCO no longer represents these units.

Union until November of 2001, but has not served as an officer of Tool, Dye, and Mold Makers Union since that date.² Schickling currently owns and operates a

² The Intervenor's Motion to Reopen the record is denied. The LM-3 for calendar year 2000 submitted by the Intervenor is not probative evidence of the current status of any of FOPSCO's officers, nor is it inconsistent with the testimony of Johannssen. Furthermore this evidence was, or should have been, accessible to the Intervenor at the date and time of the hearing.

consulting company, and was hired, and is paid, for his consulting services to the Tool, Dye, and Mold Makers Union. Maneri was an officer of the Tool, Dye, and Mold Makers Union until November 2001, but has not served as an officer of the Tool, Dye, and Mold Makers Union since that date. Maneri currently performs clerical work for the Tool, Dye, and Mold Makers Union for which she receives compensation.

ANALYSIS

Section 9(b) of the Act states, in pertinent part:

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof: Provided, That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership employees other than guards. (emphasis added).

The Board has found an “indirect affiliation” between a guard union and a non-guard union where the “extent and duration of [the guard union’s] dependence upon [the non-guard union] indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action.” U.S. Corrections Corp., 325 NLRB 375, 376 (1998), quoting Magnavox Co., 97 NLRB 1111, 1113 (1952). The Board has established that the non-certifiability of a guard union must be shown by definitive evidence. Id., citing Children’s Hospital of Michigan, 317 NLRB 580, 581 (1995), enf. sub nom. Henry Ford Health System v. NLRB, 105 F.3d 1139 (6th Cir. 1997).

The Intervenor relies on Brinks, Inc. of Florida, 283 NLRB 711 (1987), enf. denied 843 F.2d 448 (11th Cir. 1988), and cases cited therein, for the proposition that guard unions must be fully independent of organizations that admit non-guards as members. The Intervenor argues that the Petitioner’s participation in benefit plans sponsored and administrated by a non-guard union and covering both non-guard employees and guard employees could result in a scenario of divided loyalty for the guards --- precisely the type of scenario the Congress sought to avoid.

In Brinks, 843 F.2d 448, the 11th Circuit denied enforcement of the Board’s order directing the employer to bargain with the guard union. The court cited Brinks, Inc., 274 NLRB 970 (1985), where the Board refused to certify the guard union there because the secretary-treasurer was an elected trustee of a non-guard union. The court observed the

Board refused to certify the guard union because there was indirect affiliation and the record indicated the guard union lacked freedom and independence in formulating its own policies. Brinks at 453 (emphasis added). The court also stated that given the circumstances of the case, the Board failed to consider adequately the realistic potential for divided loyalties where the guard union and non-guard union shared officers. Brinks at 454 (emphasis added).

Brinks is distinguishable from the instant case in that, here, there is no definitive evidence of any direct or indirect affiliation between FOPSCO and any non-guard union. Without any such evidence, there can be no resulting, realistic potential for divided loyalties.

Regarding FOPSCO's participation in the ITPE pension and health and welfare funds, the testimony of Mr. Johannssen makes it clear that FOPSCO is no longer participating in those ITPE funds. FOPSCO administers its own pension plan and utilizes the employer's health and welfare plan until it establishes its own. Even assuming, arguendo, that FOPSCO still participates in the ITPE funds, the Intervenor and Employer failed to produce definitive evidence that such participation constitutes indirect affiliation. The issue of a common fund between a guard union and a non-guard union was addressed by the Board in Rock-Hil-Uris, Inc., 193 NLRB 313 (1971). There, the Board found no indirect affiliation between the guard union and the non-guard union because the record contained no evidence that the guard union, in participating in the insurance, pension, and family medical funds, delegated its authority to administer the funds to the non-guard union and lost its ability to act independently of the non-guard union in transactions concerning the funds. Id. at 314. Here, the Intervenor points to the fact that the ITPE plans list and refer to both the AFSPSO and AFSPA as designated, affiliate unions. Johannssen testified that though AFSPSO and AFSPA are listed and referred to in the ITPE plans, both were listed as separate union entities. Even assuming the Intervenor is correct in its interpretation of the designations of AFSPSO and AFSPA in the ITPE documents, this fact alone is insufficient to establish the guard union's affiliation with a non-guard union and the guard union's lack of independence in the instant case.

Nor do I find a disqualification based on the allegation of shared personnel between FOPSCO and the Tool, Dye, and Mold Makers Union. Johannssen testified, without contradiction, that within the past year, no officer or elected official of FOPSCO held an office or elected position with any other labor organization. With regard to the issue of shared personnel, the Board will look to the affiliations as of the date the petition was filed or the date the hearing was held. U.S. Corrections Corp., 325 at 376; Wells Fargo Guard Services, 236 NLRB 1196, 1197 (1978).

The Intervenor relies on Wells Fargo Guard Services for the proposition that dismissal of the petition is mandated where officers of a guard union simultaneously serve as officers for a non-guard union. However, in this case, there is no record evidence that FOPSCO's officers currently are simultaneously serving as officers for any non-guard union. As of the date of the petition and hearing, Schickling, National

Business Agent for FOPSCO, performs consulting work for the Tool, Dye, and Mold Makers Union, but he does not hold any office or position with that union. The Board has not found an indirect affiliation where an official of a non-guard union served as an advisor to a guard union. Wackenhut Corp., 325 NLRB 1081 (1998). Conversely, Schickling's consulting services to a non-guard union, in and of itself, is a legally insufficient basis for finding an indirect affiliation. Similarly, as of the date of the petition and hearing, Maneri, Secretary-Treasurer for FOPSCO, performs clerical work for the Tool, Dye, and Mold Makers Union. The Board has found the use of clerical services and the renting of common office space to be insubstantial in examining direct or indirect affiliation. Rock-Hil-Uris, Inc., 193 NLRB at 314.

In sum, based upon the Intervenor's failure to produce any definitive evidence at the hearing to establish the Petitioner's direct or indirect affiliation with a non-guard union, I reject the Intervenor's contention that the Petitioner is not a certifiable union. As the Board has consistently recognized since U.S. Corrections Corp., 325 NLRB at 376, "any less stringent standard [than definitive evidence] would seriously undermine the rights of guards to be represented by a union and of guard unions to represent guards." See also Children's Hospital of Michigan, 317 NLRB at 581. For these reasons, I deny the Intervenor's motion to dismiss the petition.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner, Federation of Police, Security and Correction Officers, AFSPA, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Holiday International Security, Inc., a Maryland corporation, with a main office in Silver Spring, Maryland, is engaged in the business of providing security services to agencies of the United States Government and to private corporations. During the preceding 12 months, a representative period, the Employer provided services valued in excess of \$50,000 to business enterprises located outside the State of Maryland.

6. The parties stipulated, and I find, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time security guards, including non-supervisory sergeants, employed by the Employer at the Social Security Main Complex pursuant to a contract between the Employer and the Social Security Administration, but excluding all office clericals, professionals, managerial, and confidential employees, non-guard employees, and supervisors, including supervisory sergeants, as defined by the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **FEDERATION OF POLICE, SECURITY AND CORRECTION OFFICERS, AFSPA**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly

legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **OCTOBER 10, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **OCTOBER 17, 2002**. The request may not be filed by facsimile.

(SEAL)

WAYNE R. GOLD

Dated: OCTOBER 3, 2002

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

177-3950-9000